

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

WASHINGTON STATE ASSOCIATION OF  
HEAD START AND EARLY CHILDHOOD  
ASSISTANCE AND EDUCATION  
PROGRAM, ILLINOIS HEAD START  
ASSOCIATION, PENNSYLVANIA HEAD  
START ASSOCIATION, WISCONSIN  
HEAD START ASSOCIATION, FAMILY  
FORWARD OREGON, and PARENT  
VOICES OAKLAND,

*Plaintiffs,*

v.

ROBERT F. KENNEDY, JR., in his official  
capacity as Secretary of Health and Human  
Services; U.S. DEPARTMENT OF HEALTH  
AND HUMAN SERVICES; ANDREW  
GRADISON, in his official capacity as Acting  
Assistant Secretary of the Administration for  
Children and Families; ADMINISTRATION  
FOR CHILDREN AND FAMILIES; OFFICE  
OF HEAD START; and TALA HOOBAN, in  
her official capacity as Acting Director of the  
Office of Head Start,

*Defendants.*

Case No. 2:25-cv-00781-RSM

**JOINT STATUS REPORT**

The Parties respectfully submit this Joint Status Report on the parties' positions on whether this case is exempt from discovery under FRCP 26(a)(1)(B), as the Court directed by email on June 18, 2025.

**Procedural History**

On May 13, 2025, the Court set deadlines for the FRCP 26(f) conference, the initial disclosures pursuant to FRCP 26(a)(1), and the combined joint status report and discovery plan

1 required by FRCP 26(f) and Local Civil Rule 26(f). *See* Order Regarding Initial Disclosures,  
 2 Joint Status Report, and Early Settlement, ECF No. 33, at \*1. In the same order, the Court  
 3 directed the parties to notify the Courtroom Deputy if “this case involves claims which are  
 4 exempt from the requirements of FRCP 26(a) and 26(f).” *Id.*

5 On June 9, 2025, the parties jointly requested a one-week extension of the deadlines in  
 6 the May 13, 2025 order to accommodate a scheduling conflict for Defendants’ counsel.

7 On June 17, 2025, in advance of the rescheduled FRCP 26(f) conference, Defendants’  
 8 counsel notified the Court by email that “the government believes this case is exempt from the  
 9 requirements of FRCP 26(a) and 26(f) pursuant to FRCP 26(a)(1)(B).” On June 18, 2025,  
 10 Plaintiffs’ counsel responded to Defendants’ email and stated that they disagree with Defendants’  
 11 position. The Court directed the parties to “meet and confer regarding the issue and submit a  
 12 joint status report to the Court no later than Thursday, June 26, 2025.

13 Pursuant to the Court’s directions, the parties met and conferred via teleconference on  
 14 June 25, 2025. The parties were unable to reach agreement on this issue, and provide their  
 15 respective positions below.

### 16 **1. Plaintiffs’ Position**

17 Plaintiffs disagree with Defendants’ position that FRCP 26(a)(1)(B) exempts this case  
 18 from the requirements of FRCP 26(a) and 26(f). That rule states that certain proceedings “are  
 19 exempt from initial disclosure,” including “an action for review on an administrative record.”  
 20 Plaintiffs have pleaded eleven claims in their Amended Complaint: five constitutional claims;  
 21 one statutory claim; and five APA claims. “Ninth Circuit caselaw supports that a plaintiff may  
 22 pursue a freestanding, constitutional claim outside of the review procedures prescribed by the  
 23 APA.” *Washington v. United States Dep’t of Homeland Sec.*, No. 4:19-CV-5210-RMP, 2020 WL  
 24 4667543, at \*6 (E.D. Wash. Apr. 17, 2020) (citing *Sierra Club v. Trump*, 929 F.3d 670, 698–99  
 25 (9th Cir. 2019)); *see Grill v. Quinn*, No. CIV S-10-0757 GEB, 2012 WL 174873, at \*2 (E.D. Cal.  
 26 Jan. 20, 2012) (“A direct constitutional challenge is reviewed independent of the APA. As such  
 27

1 the court is entitled to look beyond the administrative record in regard to this claim.” (internal  
2 citation omitted)). Some district courts in this Circuit consider whether “the constitutional claims  
3 ‘fundamentally overlap’ with the APA claims.” *Yocom v. United States Citizenship & Immigr.*  
4 *Servs.*, No. 22CV0839 JO (BLM), 2025 WL 886957, at \*3 (S.D. Cal. Mar. 21, 2025)

5 Plaintiffs’ constitutional and statutory claims are not “attachments” to their APA claims  
6 and do not “fundamentally overlap.” Rather, these are independent claims “for which the record  
7 of the agency’s decision making would not comprehensively address,” and therefore, “discovery  
8 outside the administrative record is warranted.” *United Farm Workers v. Noem*, No. 1:25-cv-  
9 00246, 2025 WL 1490131 (E.D. Cal. May 23, 2025) (rejecting the same position regarding  
10 FRCP 26(a)(1)(B) that Defendants have argued in this case). For example, Plaintiffs’ Separation  
11 of Powers and Spending Clause claims allege that Defendants thwarted Congress’s directive to  
12 spend appropriated funds to implement the Head Start program. Discovery into the Defendants’  
13 distribution of appropriated funds, the implementation of their mass “reorganization” of the  
14 Office of Head Start following the mass office closures and layoffs, and data on the time it takes  
15 for Defendants to complete mandatory tasks such as monitoring reviews and change of scope  
16 applications, are relevant to Plaintiffs constitutional claims, which unlike the APA claims are not  
17 focused on “the administrative record in existence at the time of the decision.” *Lands Council v.*  
18 *Powell*, 395 F.3d 1019, 1029 (9th Cir. 2005). Similarly, Plaintiffs’ vagueness claim alleges that  
19 Defendants’ DEIA Ban violates the Fifth Amendment because it allows arbitrary enforcement  
20 and “resolution on an ad hoc and subjective basis.” *Grayned v. City of Rockford*, 408 U.S. 104,  
21 108–09 (1972). Discovery into the Defendants’ Monitoring Protocol, including guidance they  
22 provide to those charged with monitoring Head Start agencies is necessary to evaluate whether or  
23 not they comply with Head Start requirements, and is relevant to Plaintiffs constitutional claim  
24 even if not relevant to their APA claim because it post-dates the challenged final agency action  
25 and would not be included in any Administrative Record.

26 Because this case is not exempt from initial disclosures, the parties should comply with  
27

1 the Court's prior orders regarding discovery. Plaintiffs are prepared to promptly comply with all  
2 FRCP 26(f) and Local Civil Rule 26(f) requirements, including the FRCP 26(f) conference, the  
3 initial disclosures pursuant to FRCP 26(a)(1), and the combined joint status report and discovery  
4 plan.

5 Additionally, Defendants argue that they should not have to comply with any discovery  
6 obligations until after this Court resolves the dispositive motion they have not yet filed. But  
7 discovery is proper even where a motion to dismiss actually is pending. *See Gray v. First*  
8 *Winthrop Corp.*, 133 F.R.D. 39, 40 (N.D. Cal. 1990) ("The intention of a party to move for  
9 judgment on the pleadings is not ordinarily sufficient to justify a stay of discovery.").

10 Lastly, Plaintiffs' initial complaint was filed on April 28, 2025, and an amended  
11 complaint was filed on May 13, 2025. Defendants were served the amended complaint via  
12 Federal Express on May 21, 2025. AUSA Kristin Johnson filed her appearance on June 2, 2025.  
13 She was then served the Amended Complaint via Federal Express on June 25, 2025.

14 Plaintiffs respectfully request that the Court order Defendants to proceed with these  
15 FRCP requirements, so that the parties can proceed with the expeditious and orderly prosecution  
16 of this case. To the extent the Court needs further information to decide this issue, Plaintiffs are  
17 available for a conference to further elaborate their position that this case is not exempt from  
18 Rule 26(a) and (f).

## 19 **2. Defendants' Position**

20 On June 17, 2025, Defendants notified the Court Clerk, pursuant to Dkt. 33, that the  
21 government believes this case is exempt from the requirements of Fed. R. Civ. P. 26(a) and 26(f)  
22 because it is an action for review on an administrative record. Plaintiffs disagreed citing the fact  
23 that they have brought claims under the Administrative Procedures Act (APA) and "non-  
24 Administrative Procedure Act claims." The parties met and conferred on June 25, 2025, and were  
25 unable to reach an agreement on whether this case is exempt from the requirements of Fed. R.  
26 Civ. P. 26(a) and 26(f).

1 Defendants believe that a determination on this issue is premature and that the deadlines  
2 in the Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement (Dkt. 33)  
3 should be stayed for two reasons: (1) Defendants have not been properly served and; (2) at this  
4 early stage in the litigation, it is unclear whether the Court has jurisdiction over Plaintiffs' claims,  
5 and if so, whether the alleged Constitutional claims are sufficiently distinct from the APA claims  
6 to justify court-approved extra-record discovery.

7 First, Plaintiffs have not effectuated service under Fed. R. Civ. P. 4(i). The Affidavits of  
8 Service filed with the Court state that Plaintiffs mailed a copy of the summons and complaint to  
9 some of the named agencies and employees by certified mail. Dkt. 34. But they do not represent  
10 that Plaintiffs also served the United States. And the United States Attorney's Office for the  
11 Western District of Washington has no record of service in this case. Discovery prior to  
12 perfecting service of the complaint on Defendants is premature. *See Cearly v. Haynes*, 2021 WL  
13 12141672, at \*1 (W.D. Wash. Nov. 1, 2021). Conducting a Rule 26(f) conference and developing  
14 a proposed discovery plan, which is the beginning of the formal discovery process, would also be  
15 premature when the complaint itself has not yet been served.

16 Second, Defendants will have sixty days after service on the United States Attorney to  
17 file a responsive pleading. Fed. R. Civ. P. 12(a)(2). Defendants expect to file a dispositive motion  
18 addressing the Court's jurisdiction on both the alleged APA and Constitutional claims. This  
19 motion may be dispositive of all or some of Plaintiffs' claims. Additionally, Plaintiffs' motion for  
20 a preliminary injunction remains pending and Defendants have contested the Court's jurisdiction  
21 for both claims in their opposition.

22 While it is difficult to determine at this early stage in the litigation whether this case is  
23 exempt from the requirements of Fed. R. Civ. P. 26(a) and 26(f), Defendants believe that if  
24 Plaintiff's APA claims survive a dispositive motion this case will likely involve claims that are  
25 "an action for review on an administrative record" and are exempt. Fed. R. Civ. P. 26(a)(1)(B)(i).  
26 While Defendants do not concede that Plaintiffs have satisfied the threshold requirements to  
27

1 qualify for judicial review under the APA, their Amended Complaint is pled as an APA action  
2 with Constitutional claims attached. Discovery in APA cases is usually not permitted, and they  
3 are exempt from Rule 26's ordinary requirement to confer and develop a proposed discovery  
4 plan. *See* Fed. R. Civ. P. 26(a)(1)(B)(i) (exempting "an action for review on an administrative  
5 record" from initial disclosure obligations); Fed. R. Civ. P. 26(f)(1)–(3) (exempting such actions  
6 from the requirement to confer and develop a proposed discovery plan).

7       It appears that the alleged Constitutional claims, as pled in the Amended Complaint, are  
8 not sufficiently distinct from the alleged APA claims to qualify for an exception that justifies  
9 court-approved extra-record discovery. The Ninth Circuit has found that "claims challenging  
10 agency actions – particularly constitutional claims – may exist wholly apart from the APA."  
11 *Sierra Club v. Trump*, 929 F.3d 670, 699 (9th Cir. 2019). Following this ruling, several district  
12 courts have determined that constitutional claims are governed by the APA and, therefore,  
13 constitutional claims should be decided on the administrative record without further discovery.  
14 *See California v. United States Dep't of Homeland Security*, 612 F.Supp.3d 875, 896 (N.D. Cal.  
15 Apr. 1, 2020) (citing cases). On the other hand, several courts recognize that some limited  
16 discovery may be appropriate for a constitutional claim involving agency action. *Id.* (citing  
17 cases). Most courts decline to draw a bright line or categorical rule and instead examine the  
18 particular facts of the claims involved and the discovery requested before allowing discovery to  
19 proceed. *Id.* at 896-97 (citing cases).

20       Here, the Court, and the parties, will be in a better position to determine whether any  
21 viable claims are exempt under Fed. R. Civ. P. 26(a)(1)(B)(i) following a ruling on Plaintiffs'  
22 pending motion for a preliminary injunction and Defendants' expected dispositive motion. *Id.* at  
23 895 (finding discovery premature prior to assessing viability of plaintiff's claims in similar APA  
24 claim with Constitutional claims attached). At that time, the Court will be able to examine the  
25 particular facts of the claims involved and the discovery requested before deciding whether to  
26 allow any extra-record discovery to proceed.

Therefore, Defendants believe that the Court should reserve a determination on this issue and stay the deadlines in the Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement until Defendants are properly served under Rule 4(i), the Court rules on the pending preliminary injunction, and the Court rules on Defendants' anticipated dispositive motion.

Alternatively, Defendants request the opportunity to file a motion for relief from, or to stay, the deadlines in the Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement pursuant Fed. R. Civ. P. 16(b)(4) and LCR 16(b)(6) in order to fully brief whether Plaintiffs' alleged APA and Constitutional claims, as currently pled in the Amended Complaint, are sufficiently distinct from each other to allow discovery regarding the Constitutional claims to proceed beyond the confines of the APA framework.

Dated: June 26, 2025

Respectfully submitted,

**Attorneys for Plaintiffs**

Ming-Qi Chu (*pro hac vice*)  
 Jenessa Calvo-Friedman (*pro hac vice*)  
 Linda S. Morris\* (*pro hac vice*)  
 \*admitted in State of Maryland  
 Sania Chandrani  
 AMERICAN CIVIL LIBERTIES  
 UNION FOUNDATION  
 125 Broad Street, 18<sup>th</sup> Floor  
 New York, NY 10004  
 Tel: (212) 549-2500  
[mchu@aclu.org](mailto:mchu@aclu.org)

Michelle Fraling (*pro hac vice*)  
 AMERICAN CIVIL LIBERTIES  
 UNION FOUNDATION  
 915 15<sup>th</sup> Street NW, 6<sup>th</sup> Floor  
 Washington DC, 20005  
 Tel: (917) 710-3245  
[michelle.fraling@aclu.org](mailto:michelle.fraling@aclu.org)

Laboni A. Hoq (*pro hac vice*)

By:     /s/     La Rond Baker  
 La Rond Baker (WSBA No. 43610)  
 Brent Low (WSBA No. 61795)  
 David Montes (WSBA No. 45205)  
 AMERICAN CIVIL LIBERTIES  
 UNION OF WASHINGTON  
 P.O. BOX 2728  
 Seattle, Washington 98111-2728  
 Tel: (206) 624-2184  
[baker@aclu-wa.org](mailto:baker@aclu-wa.org)

Kevin M. Fee (*pro hac vice*)  
 Allison Siebeneck (*pro hac vice*)  
 ROGER BALDWIN FOUNDATION OF  
 ACLU, INC.  
 150 N. Michigan Ave, Suite 600  
 Chicago, IL 60601  
 Tel: (312) 201-9740  
[kfee@aclu-il.org](mailto:kfee@aclu-il.org)

Lindsay Nako (*pro hac vice*)



HOQ LAW APC  
 AMERICAN CIVIL LIBERTIES  
 UNION FOUNDATION  
 (Cooperating Attorney)  
 P.O. Box 753  
 South Pasadena, CA 91030  
 Tel: (213) 977-9004  
[laboni@hoqlaw.com](mailto:laboni@hoqlaw.com)

Lori Rifkin (*pro hac vice*)  
 Fawn Rajbhandari-Korr (*pro hac vice*)  
 Meredith Dixon (*pro hac vice*)  
 Megan Flynn (*pro hac vice*)  
 IMPACT FUND  
 2080 Addison Street, Suite 5  
 Berkeley, CA 94704  
 Tel: (510) 845-3473  
[lrifkin@impactfund.org](mailto:lrifkin@impactfund.org)

S. Starling Marshall (*pro hac vice*)  
 CROWELL & MORING LLP  
 Two Manhattan West  
 375 Ninth Avenue  
 New York, NY 10001  
 Tel: (212)223-4000  
[Smarshall@crowell.com](mailto:Smarshall@crowell.com)

Edward T. Waters (*pro hac vice*)  
 FELDESMAN LEIFER LLP  
 1129 20<sup>th</sup> Street NW, 4<sup>th</sup> Floor  
 Washington, DC 20036  
 Tel: (202) 466-8960  
[ewaters@feldesman.com](mailto:ewaters@feldesman.com)

Skye Mathieson (*pro hac vice*)  
 Lucy Hendrix (*pro hac vice*  
 forthcoming)  
 Emily P. Golchini (*pro hac vice*)  
 CROWELL & MORING LLP  
 1001 Pennsylvania Ave NW  
 Washington, DC 20004  
 Tel: (202)624-2500  
[Smatheison@crowell.com](mailto:Smatheison@crowell.com)

#### Attorney for Defendants

TEAL LUTHY MILLER  
 Acting United States Attorney

By:       /s/       Kristin B. Johnson

KRISTIN B. JOHNSON, WSBA #28189  
 Assistant United States Attorney  
 United States Attorney's Office  
 700 Stewart Street, Suite 5220  
 Seattle, Washington 98101-1271  
 Telephone No. (206) 553-7970  
 Fax No. (206) 553-4073  
[kristin.b.johnson@usdoj.gov](mailto:kristin.b.johnson@usdoj.gov)